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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/615,762	07/09/2003	Terry M. Howley	MSH-567	9900
8131 7590 03/11/2009 MCKELLAR IP LAW, PLLC 784 SOUTH POSEYVILLE ROAD MIDLAND, MI 48640				
EXAMINER				
ROWAN, KURT C				
ART UNIT		PAPER NUMBER		
3643				
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03/11/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/615,762

**Applicant(s)**

HOWLEY, TERRY M.

**Examiner**

Kurt Rowan

**Art Unit**

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 21-40 is/are pending in the application.
- 4a) Of the above claim(s) 24, 27-30, 32-36 and 38-40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-23, 25-26, 31, 37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S5108)  
Paper No(s)/Mail Date \_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

## **DETAILED ACTION**

### ***Claim Objections***

1. The claims should be provided with proper status identifiers noting that claims 24, 27-30, 32-36, 38-40 have been withdrawn as being drawn to a non-elected invention noting that these claims are not drawn to the elected species of Figs. 3-5.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 21-22, 25, 26, 31, and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Willey (US 2961209) for substantially the same reasons stated in the last Office Action.

The patent to Willey in reference to claims 21 and 37, shows a fishing rod holder having a unitary body member 10 having a base 14 flanked by a pair of substantially coplanar flanges 16, 18. Willey shows an extension 36 unitarily joined to and projecting beyond one the flanges as shown in Fig. 3. Willey shows the extension having an open-ended notch 42 for removably receiving an elongate article such as a fishing rod 74. Willey shows that the fishing rod is disabled from movement in each of two opposite directions such as side to side movement. Willey shows that the rod has unrestricted movement in a direction parallel to the axis of the extension when the lever 68 is depressed. Willey shows the flanges having at least one slot such as 76 in flange 18 and 20 in flange 16.

The broadest reasonable interpretation is applied to the term since applicant has not defined slots in the specification. Willey shows clamping means 22, 28 removably accommodated in the slots. Willey shows the body member clamped atop a support in Figs. 1-3 with the extension projecting upwardly from one of the flanges in a direction away from the support. Willey shows the support 24 is arcuate and the body member has a concave base for confronting and seating on the support. In reference to claim 25 Willey shows a pair of clamp members 22, 28 coupled to the body with the space between the clamp members being sufficient to accommodate the support 24 between the clamp members. The clamp members can be interpreted to be in a substantially parallel spaced apart condition since the end faces of 22 and 28 are parallel. Applicant should define the invention more precisely to overcome this grounds of rejection. In reference to claim 26, Willey shows adjusting means as the head and threads on bolt 22 noting Fig. 1. In reference to claim 31, Willey shows means 22, 28 coupling the body member with clamping members 16, 18 and adjusting means as the threads on bolt 22 for rocking the clamp members relative to the body member and varying the space between the clamp members. The coupling means when loose are thought to rockably couple the clamp members to the body member.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Willey for substantially the same reasons stated in the last Office Action.

The patent to Willey shows a fishing rod holder as discussed above. Willey shows a U-shaped notch, but it would have been obvious to employ a V-shaped notch since the function is the same and no showing of unexpected results was made. Also, see *In re Dailey et al.*, 149 USPQ 47 which states that changes in shape are obvious.

### ***Response to Arguments***

6. Applicant's arguments filed 11/18/2008 have been fully considered but they are not persuasive. Applicant's response overcomes the rejection under 35 USC 112, 2d paragraph and the objection to the specification. In regard to the rejection under 35 USC 102, applicant argues that Willey does not contain an arcuate rod holder defining diametrically disposed ends. However, rod holder 12 of Willey is arcuate since it is curved and defines diametrically disposed ends in relation to mounting bolt 48. Each end has a slot 42 to hold the fishing rod 74 as shown in Fig. 1. In response to applicant's argument that there is no suggestion to combine Willey to provide a rod holder of the instant invention having the simple set of components as are described in the instant specification, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case,

the knowledge is generally available to one of ordinary skill in the art. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the components as are described in the instant specification) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The claims of the present invention should be amended to recite more structure to overcome the prior art.

### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Rowan whose telephone number is (571) 272-6893. The examiner can normally be reached on Monday-Thursday 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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